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IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF:
PETITION TO AMEND THE
RULES OF THE SUPREME
COURT, SECTION V.
REGULATION OF THE PRACTICE
OF LAW, RULE 45

Supreme Court No. R-08-0003

PETITIONER'S REPLY

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the *ad hoc* Committee on Compulsory Arbitration in the Superior Court, through the undersigned, files this reply to the comments to the petition to amend the Rules of the Arizona Supreme Court, Section V. Regulation of the Practice of Law, Rule 45.

State Bar of Arizona Comments to Rule 45

The State Bar filed a comment opposing the recommendation of the *ad hoc* Committee on Compulsory Arbitration in the Superior Court that lawyers who

provide service as arbitrators in compulsory arbitration cases be given continuing legal education (CLE) credit for some portion of the time spent on preparing for and conducting the arbitration hearing. The Bar expressed concern that to approve the petition would “open the floodgates” to alternative forms of CLE and diminish the perceived value of work performed by volunteers in the administration of justice. The Committee disagrees.

Serving as an arbitrator is easily distinguishable from other “volunteer service.” When a lawyer is appointed as an arbitrator the duty to the court is mandatory, not volunteer service. Lawyers who volunteer have the benefit of choosing the type of volunteer service. They may choose to work on issues and projects that are compatible with their personal and professional interests as well as their specialized area or areas of practice. Lawyers appointed as an arbitrator oftentimes are assigned cases involving legal issues outside of their field of expertise. They do not get to choose the type of cases. In fact, based on the survey comments the committee received and Committee discussions, there is not necessarily a preference to have personal injury lawyers sit as arbitrators on personal injury cases, and there was some preference that they do not.

Statutes and rules of court recognize serving as an arbitrator is not “volunteer service.” Volunteer service is just that...voluntary and without

compensation. Rules of the Supreme Court establish a system of mandatory service and the Rules and statutes provide for payment, albeit a relatively small one, for serving as an arbitrator.

The Committee's proposal is a modest attempt to recognize the significant educational value resulting from serving as an arbitrator. It is limited to two credit hours and only arbitrators who qualify for compensation and choose to forgo it are eligible for the CLE. An arbitrator qualifies for compensation only "for each day necessarily expended by the arbitrator *in the hearing and determination of the case.*" The number of arbitrators who would be eligible for CLE is far less than the total number of lawyers who are appointed as arbitrators.

The Committee's proposal will neither "open the flood gates" nor diminish the value of volunteer service preformed by members of the Bar.

The State Bar further suggests that members might more appropriately benefit from the self-study provisions of the MCLE regulations. The Committee appreciates the State Bar's suggestion, but a review of the current courses offered by the State Bar reveals that self-study courses that meet the unique educational needs of arbitrators are not available. If and when relevant self-study courses become available arbitrators undoubtedly will take advantage of the offerings as they do by taking other courses related to their practice of law. More important,

the State Bar's suggestion that self-study credit hours should be sufficient for arbitrator service ignores the Committee's principle reason for filing this Rule change petition. The Committee believes serving as an arbitrator is in and of itself an educational experience and is deserving of two hours of CLE credit.

Comments of the Pima County Bar Association

The Pima County Bar Association supports the proposed rule and endorses availability of CLE for service as an arbitrator. They agree with the Committee's recommendation that service is an educational experience as valuable as any course offered to members of the Bar and more educational than self-study. They, too, agree that arbitration is different from voluntary service and the specificity of the rule is enough to distinguish it from other "volunteer" endeavors.

Comments of Judge Cornelio

Judge Cornelio, a member of the Committee, commented separately on the proposed rule and restates the benefits that arbitration service offers to the attorney who serves. Judge Cornelio also points out that to sit in judgment as the trier of fact is the ultimate way for an attorney to learn how to prepare, present, and argue a case effectively. Judge Cornelio further offers an alternative to the position stated in the original petition that could satisfy, in part, the concern expressed by

the State Bar. He suggests that the credit earned by the arbitrator be included within the 5 hour cap allowed for self-study.

The Committee endorses this proposal.

DATED this 8th day of January, 2008.

Committee on Compulsory Arbitration
/ s / Mike Baumstark

Mike Baumstark
Committee Chair